

## **REMARKS/ARGUMENTS**

Applicants have received and carefully reviewed the Office Action mailed January 5, 2010. Claims 1, 3-10, 12-21, and 23-31 are pending and have been rejected. Applicants respectfully traverse all adverse assertions, objections, and rejections presented in the Office Action. With this amendment, claims 1, 14, 23, and 27 have been amended to clarify the relationships among certain claim elements. No new matter has been added. Favorable consideration of the above amendments and the following remarks is respectfully requested.

### ***Specification Objection***

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. The Office Action asserts that claims 17, 18, and 20 recite the use of “cool saline solution” and “warm saline solution”, and that this terminology is not found in the specification.

Applicants respectfully note that claim 20 does not recite the disputed terminology. Regarding the terms “cool saline solution” and “warm saline solution” of claims 17 and 18, Applicants note that the recited terminology was part of the claims as originally filed. Accordingly, the specification has been amended to include the recited claim terminology, thereby providing the required antecedent basis. See MPEP 2163.06, which states: “information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter.” Withdrawal of the objection is respectfully requested.

### ***Claim Amendments***

Independent claims 1, 14, 23, and 27 have been amended to clarify the relationship among certain claim elements. In particular, the annular space between the inner tube and the outer tube is not in fluid communication from the lumen of the inner tube and from the exterior of the balloon. The annular lumen provides fluid communication for inflation media to and from the balloon, in accordance with the specification. The amendments also find support in the Figures, and are most easily visualized in Figures 5 and 6.

### ***Claim Rejections – 35 USC § 103***

Claims 1, 4-7, 9, 10, 14-16, 18, 19, and 23-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski (U.S. Patent No. 6,579,305) in view of Fischell et al. (U.S. Patent No. 5,976,153). After careful review, Applicants must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03)

With respect to independent claims 1, 14, and 23, the Office Action acknowledges that Lashinski does not disclose or suggest all of the structural limitations of the claims. Fischell et al. are introduced as providing a distal tip with a proximal edge defining an edge diameter and a distal end of an outer tube defining a distal end diameter, where the distal end diameter and the edge diameter are equal to or greater than a maximum outer diameter of the stent in an unexpanded form. Without conceding the correctness of the rejection, Applicants have amended the claims to further distinguish from the cited references.

The claims have been amended to require that the annular space disposed between the inner tube and the outer tube is not in fluid communication from the lumen of the inner tube and an exterior of the balloon. Lashinski appears to rely upon perfusion apertures to bathe the stent with temperature-controlled fluid or to permit cooled fluid within the balloon to be released and replaced with new temperature-controlled fluid. The asserted modifications of Lashinski in view of Fischell et al. do not appear to produce the configuration required by the amended claims. Further, modification of Lashinski to produce such a configuration would impermissibly alter the principle of operation of Lashinski, rendering the device unsuitable for its intended use (MPEP 2143.01 V-VI).

Applicants submit that Lashinski and Fischell et al., alone or in combination, do not appear to recite all of the elements of independent claims 1, 14, and 23, as is required to establish a *prima facie* rejection. Accordingly, independent claims 1, 14, and 23 are

believed to be patentable over the cited references. Since claims 4-7, 9, 10, 15, 16, 18, 19, and 24-26 depend from independent claims 1, 14, and 23 and add additional elements thereto, these claims are also believed to be patentable over the cited references.

Applicants respectfully request that the rejection be withdrawn.

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski in view of Fischell et al. as applied to claim 1, and further in view of Klein (U.S. Patent No. 6,605,107). After careful review, Applicants must respectfully traverse this rejection.

As discussed above, independent claim 1 is believed to be patentable over Lashinski in view of Fischell et al. Klein does not appear to remedy the shortcomings of Lashinski and Fischell et al. with respect to claim 1. Accordingly, claim 1 is believed to be patentable over the cited combination. Since claim 8 depends therefrom and adds additional elements thereto, claim 8 is also believed to be patentable over the cited references. Withdrawal of the rejection is respectfully requested.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski in view of Fischell et al. as applied to claim 16, and further in view of Rabkin et al. (U.S. Patent No. 6,676,692). Claim 21 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski in view of Fischell et al. as applied to claim 19, and further in view of Healey et al. (U.S. Patent No. 6,607,553). After careful review, Applicants must respectfully traverse these rejections.

As discussed above, independent claim 14 is believed to be patentable over Lashinski in view of Fischell et al. Neither Rabkin et al. nor Healey et al. appear to remedy the shortcomings of Lashinski and Fischell et al. with respect to claim 14. Accordingly, claim 14 is believed to be patentable over the cited combinations. Since claims 17 and 21 depend therefrom and add additional elements thereto, claims 17 and 21 are also believed to be patentable over the cited references. Withdrawal of the rejections is respectfully requested.

Claims 3, 12, 13, 20, and 27-29 were rejected under 35 U.S.C. §103(a) as being

unpatentable over Lashinski in view of Fischell et al. as applied to claims 1 and 14, and further in view of Kasprzyk et al. (U.S. Patent No. 5,035,694). After careful review, Applicants must respectfully traverse this rejection.

As discussed above, independent claims 1 and 14 are believed to be patentable over Lashinski and Fischell et al. Kasprzyk et al. do not appear to remedy the shortcomings of Lashinski and Fischell et al. with respect to claims 1 and 14. Therefore, claims 1 and 14 are believed to be patentable over the cited combination. Since claims 3, 12, 13, and 20 depend from independent claims 1 and 14 and add additional elements thereto, these claims are also believed to be patentable over the cited references.

With this amendment, independent claim 27 has been amended to include similar limitations to claims 1, 14, and 23. For at least the reasons discussed above with respect to claims 1, 14, and 23, Lashinski and Fischell et al. do not appear to disclose or suggest all of the required claim elements of claim 27. Kasprzyk et al. do not appear to remedy the shortcomings of Lashinski and Fischell et al. with respect to claim 27. Therefore, independent claim 27 is believed to be patentable over the cited references. Since claims 28-29 depend therefrom and add additional elements thereto, these claims are also believed to be patentable over the cited references.

Withdrawal of the rejection of claims 3, 12, 13, 20, and 27-29 is respectfully requested.

Claim 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski in view of Fischell et al. and Kasprzyk et al. as applied to claim 27, and further in view of Rabkin et al. Claim 31 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lashinski in view of Fischell et al. and Kasprzyk et al. as applied to claim 27, and further in view of Healey et al. After careful review, Applicants must respectfully traverse this rejection.

As discussed above, independent claim 27 is believed to be patentable over Lashinski in view of Fischell et al. and Kasprzyk et al. Neither Rabkin et al. nor Healey et al. appear to remedy the shortcomings of Lashinski, Fischell et al., and Kasprzyk et al. with respect to claim 27. Accordingly, claim 27 is believed to be patentable over the cited combinations. Since claims 30 and 31 depend therefrom and add additional

elements thereto, claims 30 and 31 are also believed to be patentable over the cited references. Withdrawal of the rejections is respectfully requested.

***Conclusion***

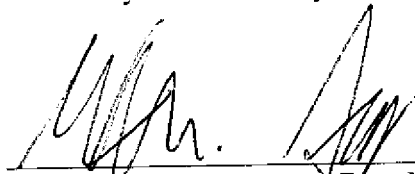
In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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